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Council

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Procedure for consideration of applications for plans of work for exploration for polymetallic sulphides

Note by the Secretariat

1. The purpose of the present note is to assist the International Seabed Authority Council by presenting a summary of the procedure for the consideration by the Legal and Technical Commission and the Council of applications for approval of plans of work for exploration for polymetallic sulphides in the Area. The procedure requires the Legal and Technical Commission to evaluate each application and submit its report and recommendations to the Council, which will then consider the application in accordance with paragraphs 11 and 12 of section 3 of the annex to the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.

I. Consideration by the Legal and Technical Commission

2. The procedure for consideration by the Legal and Technical Commission of applications for plans of work for exploration for polymetallic sulphides is set out in regulation 23 of the Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area. In accordance with regulation 23 (12), the Commission is required to apply the Regulations and the rules, regulations and procedures of the Authority in a uniform and non-discriminatory manner. Moreover, as provided for in regulation 23 (10), in considering a proposed plan of work for exploration, the Commission is required to have regard to the principles, policies and objectives relating to activities in the Area as provided for in Part XI and annex III of the United Nations Convention on the Law of the Sea and the Agreement.

3. In accordance with regulation 23 (1), upon receipt of an application for approval of a plan of work for exploration, the Secretary-General shall notify the members of the Commission and place consideration of the application as an item on the agenda for the next meeting of the Commission. The Commission is required only to consider applications in respect of which notification and information have been circulated by the Secretary-General in accordance with regulation 22 (c) at

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least 30 days prior to the commencement of the meeting of the Commission at which they are to be considered.

4. In accordance with regulation 23 (2), the Commission is required to examine applications in the order in which they are received.

5. In accordance with regulation 23 (3), the Commission is required to make objective determinations as to whether the applicant:

(a) Has complied with the provisions of the Regulations;

(b) Has given the undertakings and assurances specified in regulation 15;

(c) Possesses the financial and technical capability to carry out the proposed plan of work for exploration and has provided details as to its ability to comply promptly with emergency orders; and

(d) Has satisfactorily discharged its obligations in relation to any previous contract with the Authority.

6. In order to answer those questions, the Commission will need to consider the following:

(a) Has the applicant complied with the provisions of the Regulations?

(i) Is the applicant entitled to make the application (i.e. is it one of the qualified entities specified in regulation 9 (a) or (b))?

(ii) Is the application in the proper form as required by regulation 10 and annex 2?

(iii) Is the certificate of sponsorship in the proper form (regulation 11)?

(iv) Are the size of the blocks and their configuration in clusters in conformity with regulation 12?

(v) If the applicant has elected to contribute a reserved area to carry out activities pursuant to article 9 of annex III to the Convention, does the applicant meet the requirements of regulation 17?

(vi) If the applicant has elected to offer an equity interest in a joint venture arrangement, does the applicant meet the requirements of regulation 19?

(vii) Does the application contain the information set out in regulation 20?

(viii) When the application concerns a reserved area, does the applicant meet the requirements of regulation 18? Has the applicant submitted sufficient data and information to enable the designation of the exploration area and of the reserved area as provided for in regulation 17 and in annex 2, section II?

(ix) Has the applicant paid the fee, and which option has been elected (regulation 21)?

(b) Has the applicant given the undertakings and assurances specified in regulation 15?

Regulation 15 requires a written undertaking to be filed.

(c) Does the applicant possess the financial and technical capability to carry out the proposed plan of work for exploration, and has it provided details as to its ability to comply promptly with emergency orders?

(i) The relevant criteria are set out in regulation 13; they vary according to the category of entities into which the applicant falls.

(ii) If the application is submitted by the Enterprise, does it include a statement by its competent authority certifying that the Enterprise has the necessary financial resources to meet the estimated costs of the proposed plan of work for exploration (regulation 13 (2))?

(iii) If the application is submitted by a State or a State enterprise, does it include a statement by the State or the sponsoring State certifying that the applicant has the necessary financial resources to meet the estimated costs of the proposed plan of work for exploration (regulation 13 (3))?

(iv) For other entities, as referred to in regulation 13 (4), does the application include copies of audited financial statements, including balance sheets and profit-and-loss statements, for the most recent three years, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants? If the applicant is a newly organized entity and a certified balance sheet is not available, does the application include a pro forma balance sheet certified by an appropriate official of the applicant? If the applicant is a subsidiary of another entity, does the application contain copies of such financial statements of that entity and a statement from that entity, in conformity with internationally accepted accounting principles and certified by a duly qualified firm of public accountants, that the applicant will have the financial resources to carry out the plan of work for exploration? If the applicant is controlled by a State or a State enterprise, does the application contain a statement from the State or State enterprise certifying that the applicant will have the financial resources to carry out the plan of work?

(v) If the applicant is a partnership or consortium of entities in a joint arrangement, has each member of the partnership or consortium provided the information required under regulation 13?

(vi) Where an entity referred to in regulation 13 (4) intends to finance the proposed plan of work for exploration by borrowings, does the application include the amount of such borrowings, the repayment period and the interest rate?

(vii) As provided in regulation 13 (6), with a view to the assessment of technical capability, does the application include: (a) a general description of the applicant's previous experience, knowledge, skills, technical qualifications and expertise relevant to the proposed plan of work for exploration; (b) a general description of the equipment and methods expected to be used in carrying out the proposed plan of work for exploration and other relevant non-proprietary information about the characteristics of such technology; and (c) a general description of the applicant's financial and technical capability to respond to any incident or activity which causes serious harm to the marine environment?

(d) Has the applicant satisfactorily discharged its obligations in relation to any previous contract with the Authority?

In accordance with regulation 14, where the applicant or, in the case of an application by a partnership or consortium of entities in a joint arrangement, any member of the partnership or consortium, has previously been awarded any contract with the Authority, does the application include: (a) the date of the previous contract or contracts; (b) the date, reference number and title of each report submitted to the Authority in connection with the contract or contracts; and (c) the date of termination of the contract or contracts?

7. Pursuant to regulation 23 (4), if the answers to all the above questions are in the affirmative, then the Commission shall, in accordance with the requirements set forth in the Regulations and its procedures, determine whether the proposed plan of work for exploration will:

(a) Provide for effective protection of human health and safety;

(b) Provide for effective protection and preservation of the marine environment, including, but not restricted to, the impact on biodiversity;

(c) Ensure that installations are not established where interference may be caused to the use of recognized sea lanes essential to international navigation or in areas of intense fishing activity.

8. Regulation 23 (5) provides that: "If the Commission makes the determinations specified in paragraph 3 and determines that the proposed plan of work for exploration meets the requirements of paragraph 4, the Commission shall recommend approval of the plan of work for exploration to the Council".

9. Under regulation 23 (6), the Commission shall not recommend approval of the plan of work for exploration if part or all of the area covered by the proposed plan of work for exploration is included in:

(a) A plan of work for exploration approved by the Council for polymetallic sulphides; or

(b) A plan of work approved by the Council for exploration for or exploitation of other resources if the proposed plan of work for exploration for polymetallic sulphides might cause undue interference with activities under such approved plan of work for other resources; or

(c) An area disapproved for exploitation by the Council in cases where substantial evidence indicates the risk of serious harm to the marine environment.

10. Pursuant to regulation 23 (8), except in the case of applications by the Enterprise, on its own behalf or in a joint venture, and applications under regulation 18, the Commission shall not recommend approval of the plan of work for exploration if part or all of the area covered by the proposed plan of work for exploration is included in a reserved area or an area designated by the Council to be a reserved area.

11. The previous criteria are objective. However, in accordance with regulation 23 (9), if the Commission finds that an application does not comply with the Regulations, it shall notify the applicant in writing, through the Secretary-General, indicating the reasons. The applicant may, within 45 days of such notification,

amend its application. If the Commission after further consideration is of the view that it should not recommend approval of the plan of work for exploration, it shall so inform the applicant and provide the applicant with a further opportunity to make representations within 30 days of such information. The Commission shall consider any such representations made by the applicant in preparing its report and recommendation to the Council.

12. Further, in accordance with regulation 23 (7), the Commission may recommend approval of a plan of work if it determines that such approval would not permit a State Party or entities sponsored by it to monopolize the conduct of activities in the Area with regard to polymetallic sulphides or to preclude other States Parties from activities in the Area with regard to polymetallic sulphides.

13. Finally, under regulation 23 (11), the Commission is required to consider all applications expeditiously and to submit its report and recommendations to the Council on the designation of the areas and on the plan of work for exploration at the first possible opportunity, taking into account the schedule of meetings of the Authority.

II. Consideration and approval by the Council based on the recommendations of the Commission

14. The procedure for consideration and approval of plans of work for exploration by the Council is set out in regulation 24. The Council is required to consider the reports and recommendations of the Commission relating to approval of plans of work for exploration in accordance with paragraphs 11 and 12 of section 3 of the annex to the Agreement.

15. Pursuant to paragraph 11 of section 3 of the annex to the Agreement, the Council shall approve a recommendation by the Commission except if a two-thirds majority of its members present and voting in each of the chambers of the Council decides to disapprove a plan of work. If the Council does not take a decision on a recommendation for approval of a plan of work within a prescribed peri , the recommendation is deemed to have been approved by the Council at the end of that period. The prescribed period is normally 60 days unless the Council agrees on a longer period. If the Commission recommends the disapproval of a plan of work or does not make a recommendation, the Council may nevertheless approve the plan of work in accordance with its rules of procedure for decision-making on questions of substance.

16. Pursuant to article 153, paragraph 3, of the Convention and paragraph 6 (b) of section 1 of the annex to the Agreement, an approved plan of work for exploration shall be in the form of a contract concluded between the Authority and the applicant. Therefore, after approving a plan of work, the Council requests the Secretary-General to issue the plan of work for exploration for polymetallic sulphides in the form of a contract between the Authority and the applicant, as prescribed in annex 3 to the Regulations. The contract shall include the standard clauses that are set out in annex 4 in effect at the date of entry into force of the contract. The contract shall be signed by the Secretary-General on behalf of the Authority and by the applicant. Then the Secretary-General notifies all members of the Authority in writing of the conclusion of the contract, as provided for by regulation 25.